



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 18 2005

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Lehman, President
J&J Cores
107 West Canal Street
Newcomerstown, OH 43832

Re: J&J Cores
Consent Agreement and Final Order
Docket Number: CA-05-2005 0019


Dear Mr. Lehman:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves the violations we have been discussing. As indicated by the filing stamp on its first page, we have filed the CAFO with the Regional Hearing Clerk.

Pursuant to paragraph the CAFO, your company must pay the civil penalty within 30 days of APR 18 2005, which is the date the CAFO was filed. Your check must display the case docket number, CA-05-2005 0019, and the billing document number, 050305018.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel. He can be telephoned at 312-886-6663.

Sincerely yours,


William MacDowell
Section Chief, AECAS (MN/OH)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

J&J Cores
Newcomerstown, Ohio,

Respondent.

) Docket No. ~~CWA-05-~~ 2005 0019
)
) Proceeding to Assess a Civil
) Penalty under Section 113(d)
) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. The Respondent is J&J Cores, a sole proprietorship, doing business in Newcomerstown, Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a Consent Agreement and Final Order (CAFO). 40
C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. J&J Cores admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. J&J Cores waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO. under Section 113(d) of the Act, 42 U.S.C. § 7413(d), or otherwise.

Statutory and Regulatory Background

9. Under Section 112 of the Act, the Administrator of EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Processing at 40 C.F.R. §§ 63.1500 through 63.1519.

10. The NESHAP for Secondary Aluminum Processing applies to sweat furnaces.

11. The NESHAP, at 40 C.F.R. § 63.1501, requires the owner or operator of an existing affected source to comply with the requirement of Subpart RRR by March 24, 2003; and the owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999, must comply with the requirements by March 24, 2000, or upon startup, whichever is later.

12. The NESHAP, at 40 C.F.R. § 63.1501, requires the owner or operator of an existing affected source to comply with the requirement of Subpart RRR by March 24, 2003; and the owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999, must comply with the requirements by March 24, 2000, or upon startup, whichever is later.

13. The NESHAP, at 40 C.F.R. § 63.1506 (h)(2), provides that the owner or operator of a sweat furnace with emissions controlled by an afterburner must operate each afterburner in accordance with the Operation, Maintenance, and Monitoring (OM&M) plan.

14. The NESHAP, at 40 C.F.R. § 63.1506 (h)(1), provides that the owner or operator of a sweat furnace with emissions controlled by an afterburner must maintain a 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test or 1600

degrees Fahrenheit if a performance test was not conducted. The afterburner must meet the specifications of §63.1505(f)(1).

15. The NESHAP, at 40 C.F.R. §63.1516 (b), provides that the owner or operator must submit semiannual reports within 60 days after the end of each 6-month period. Each report must contain the information specified in §63.10(c). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

16. The NESHAP, at 40 C.F.R. §63.1510(g)(1), provides that the owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring system in subpart A of this part.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for emission violations that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for emission violations that occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

Factual Allegations

18. J&J Cores (J&J) is a "person" as defined at Section 302 (e) of the Clean Air Act, 42 U.S.C. §7602(e).

19. J&J owns and operates a facility that sweats aluminum from automotive, household, and manufacturing breakage scrap, located at 22375 Oxford Township Road 105, Newcomerstown, Ohio.

20. J&J owns and operates a sweat furnace at its facility.

21. J&J uses the sweat furnace at the facility to melt and separate aluminum from scrap containing aluminum and iron metals.

22. Emissions from J&J's sweat furnace are controlled by an afterburner.

23. J&J's sweat furnace and afterburner, installed in 2001, are subject to the requirements at 40 C.F.R. 63, Subpart RRR.

Violations**Count I - 40 C.F.R. §63.1516(b)**

24. Complainant incorporates paragraphs 1 through 19, as if set forth in this paragraph.

25. Pursuant to the regulation at 40 C.F.R. §63.1516 (b), the owner or operator of the affected source must submit semiannual reports within 60 days after the end of each 6-month period. Each report must contain the information specified in §63.10(c). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

26. J&J failed to submit a semiannual report containing all of the information specified in 40 C.F.R. §63.10(c).

27. J&J's failure to submit a complete semiannual report, constitutes a violation of the reporting deadline established under 40 C.F.R. §63.1516(c), and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

Count II - 40 C.F.R. 63.1510(g)(1)

28. Complainant incorporates paragraphs 1 through 19, as if set forth in this paragraph.

29. Pursuant to the regulation at 40 C.F.R. §63.1510(g)(1), the owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring system in subpart A of this part.

30. J&J failed to maintain a device that continuously monitor the temperature in the afterburner from March 2003 to July 2004.

31. J&J's failure to maintain and operate a device that continuously monitors and records the afterburner operating temperature constitutes a violation of the requirements established under 40 C.F.R. §63.1510(g)(1), and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

Count III - 40 C.F.R. §63.1506(h)(2)

32. Complainant incorporates paragraphs 1 through 19, as if set forth in this paragraph.

33. Pursuant to the regulation at 40 C.F.R. § 63.1506 (h)(2), the owner or operator of a sweat furnace with emissions controlled by an afterburner must operate each afterburner in accordance with the Operation, Maintenance, and Monitoring (OM&M) plan.

34. An OM&M plan provides procedures on cleaning scrap going into the sweat furnace in order to reduce emissions.

35. Under J&J's OM&M plan, all rubber, plastic and gasket materials are to be removed to the extent practicable and all liquids should be drained from scrap, prior to putting the scrap into the sweat furnace.

36. J&J's OM&M plan describes procedures for the facility to utilize when excess smokey (or visible) emissions occur. These procedures include logging the cause and correction of the occurrence in the operator's logbook. If smokey emissions are noted upon resumption of operations, the operator is to return the entire stock of cleaned scrap to be re-sorted and cleaned further. Notes in the operator's logbook should indicate the reasons for the smokey emissions and, if required by state law, appropriate notification should be made to the state air quality or environmental agency.

37. During the time period from December, 2002 to November, 2003, J&J experienced several periods of excessive visible emissions.

38. J&J failed to log these excessive visible emission occurrences in the operator's logbook.

39. J&J failed notify Ohio EPA of these excessive visible emission occurrences.

40. J&J's failure to properly log and notify Ohio EPA regarding excessive visible emissions constitutes a violation of the Operation, Maintenance and Monitoring Plan established under 40 C.F.R. § 63.1506 (h)(2), and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

Count IV - 40 C.F.R. 63.1517 (b)(2)(i)

41. Complainant incorporates paragraphs 1 through 19, as if set forth in this paragraph.

42. Pursuant to the regulation at 40 C.F.R. 63.1517 (b)(2)(i), for each affected source with emissions controlled by an afterburner, the owner or operator must maintain records of 15-minute block average afterburner operating temperature, including any period when the average temperature in any 3-hour block period falls below the compliant operating parameter value, with a brief explanation of the cause of the excursion and the corrective action taken.

43. J&J failed to maintain 15-minute block average afterburner operating temperature records. J&J manually recorded operating temperatures every 15 to 60 minutes.

44. J&J's failure to maintain afterburner operating temperature records constitutes a violation of the record keeping requirements established under 40 C.F.R. 63.1517 (b)(2)(i), and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

Procedural Matters

45. On or about August 26, 2004, EPA issued the Respondent a Finding of Violation giving notice of the alleged violations, and offering the Respondent an opportunity to confer with EPA.

46. On September 16, 2004, and subsequent dates, the Respondent conferred with EPA regarding the alleged violations and potential resolution of this matter.

Civil Penalty

47. Based upon an evaluation of the facts alleged in this complaint, the factors in Section 113(e) of the Act, including the size of the Respondent's business and the economic impact of the penalty on Respondent's business, EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991, and financial information provided by Respondent to EPA, EPA has determined that an appropriate civil penalty to settle this action is \$3,588.

48. Complainant has determined the penalty amount because the information submitted to EPA by Respondent establishes bona fide issues of ability to pay and economic impact.

49. Complainant developed the proposed penalty based on the best information available to Complainant at this time.

50. Respondent shall pay the \$3,588 civil penalty, by cashier's or certified check, payable to the "Treasurer, United States of America" within thirty (30) days of the effective date of this CAFO.

51. Respondent shall send the cashier's or certified check to the following address:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

52. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Charmagne Villasin (AE-17J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations section of this CAFO.

57. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO.

58. The settlement effected in this CAFO is conditioned upon the accuracy of Respondent's representations to U.S. EPA, specifically including the accuracy of the financial information Respondent has submitted to EPA.

59. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

60. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local statutes, laws, ordinances and regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered

by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.

61. Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations in the Violations section of this CAFO.

62. Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations in Section II of this CAFO.

63. Respondent agrees to provide EPA quarterly reports for one year which confirm steps Respondent is taking to maintain and ensure compliance with the requirements at issue. The Quarterly reports will contain the following information:

- 1) Describe any problems Respondent has experienced in the quarter complying with its applicable OM&M Plan. Relevant provisions of the OM&M Plan are attached as Attachment 1 to this CAFO; .
- 2) Set forth any improvements to the OM&M plan that Respondent's experience indicates might be helpful in reducing visible emissions;
- 3) Describe any excess visible emissions which occurred from the sweat furnace during the quarter, and the steps that were taken to correct them; and
- 4) A statement signed by Respondent's operating officer confirming that the procedures of the OM&M Plan were complied with (with any exceptions noted (in steps 1 and 2), above).

64. Respondent agrees to provide the quarterly reports to EPA within 30 days after the end of each calendar quarter as follows:

July 30, 2005 (for April-June 2005);
October 30, 2005 (for July-September 2005);
January 30, 2006 (for October-December 2005);
April 30, 2006 (for January-March 2006).

65. Respondent shall mail the quarterly reports to:

Charmagne Villasin (AE-17J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

66. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

67. The terms of this CAFO bind Respondent, and its successors, and assigns.

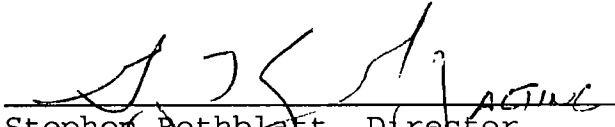
68. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

69. Each party agrees to bear its own costs and attorneys' fees in this action.

70. This CAFO constitutes the entire agreement between the parties.

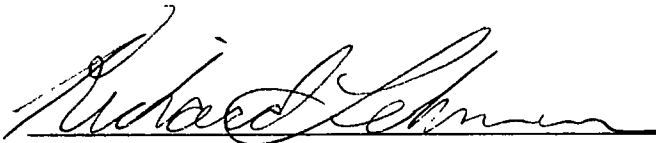
U.S. Environmental Protection Agency, Complainant

4/15/05
Date


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

J&J Cores, Respondent

3/30/05
Date


Richard Lehman, President
J&J Cores
Newcomerstown, OH

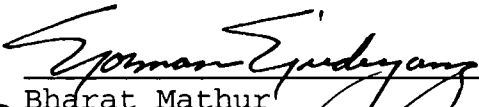
~~04-05~~ 2005 0019

CONSENT AGREEMENT AND FINAL ORDER
J&J CORES, NEWCOMERSTOWN, OHIO
Docket No. ~~CA-05~~ 2005 0019

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

4/15/05


for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Attachment 1



OPERATION AND MAINTENANCE MANUAL, EMERGENCY EPISODE MANUAL AND STANDARD OPERATING PROCEDURES FOR THE FURNACE

Standard Operating Procedure

A Material Collection, Sorting and Preparation

- Step 1 - Collect scrap aluminum.
- Step 2 - Sort scrap by origin, e.g. automotive, household, manufacturing breakage, or other.
- Step 3 - Clean scrap as follows.

Automotive

- a. Automotive parts are to be drained of oils and fuels
- b. Gasket materials, rubber and plastic fittings are to be removed, to the extent practicable.
- c. Hard metal (steel) parts such as gears and bolts are to be removed where practicable.

Household

- a. Remove plastic and rubber fittings, as practicable.
- b. Drain liquids, if any.
- c. Remove hard metal parts, as practicable,

Manufacturing Breakage

- a. Remove plastic and rubber fittings, as practicable.
- b. Remove hard metal parts, as practicable.

Other

- a. Treat as appropriate, removing combustible materials, liquids and hard metals parts as practicable.

B. Equipment Operation - Start-up and shut-down.

Step 1 - Start-Up

- a. Ignite the primary burner and afterburners
- b. operate for up to 1 hour to heat refractory material, re-liquefy the bottom pool of aluminum for best melting and pre-heat the afterburner. When the afterburner temperature reaches a stable 1600°F metal can begin to be introduced into the furnace..

Step 2 - Maintain temperatures in excess of 1600°F at the afterburner during the melting operations.

Step 3 - Shut-Down

- a. Pour entire stock of melted aluminum into ingots. By design a small residual pool of aluminum is left covering the bottom of the furnace to reflect heat back into the metal mass during the next batch melting operation.
- b. Check the primary chamber to insure that no scrap remains bridged across the inside of the furnace.
- c. Close the fuel supply to the primary chamber.
- d. Close the fuel supply to the afterburner.
- e. Close the master valve to the fuel supply.
- f. Turn power off to the blowers.

C. Melting Operation.

Step 1 - Feed scrap metal into primary chamber.

Step 2 - As scrap melts batch feed additional scrap into the primary chamber. This process generally takes between 30 and 45 minutes.

Step 3 - Pour molten aluminum into ingot forms being careful that no water is in the ingot molds when molten aluminum is poured into them.

Step 4 - Rake out irony material as required for efficient operation.

Step 5 - Repeat steps 1 through 4 until stock of scrap is exhausted or until end of

the work day

D. Emergency Episode Plan for Compliance with Emission Limits.

- Step 1 - Emergency control of spurious emissions.
- a. Immediately open the rake-out door to allow excess air into the furnace in order to quell smoky emissions..
 - b. No scrap aluminum is to be introduced into the furnace until emissions are completely clear and the reason for smoking is ascertained, corrected and logged in the operator's manual.
- Step 2 - Should smoky emissions again be noted upon resumption of operations, the entire stock of cleaned scrap should be returned to the sorting and material preparation areas for further cleaning. Notes in the operator's logbook should be made to indicate the reasons for the smoke and, if required by state law, appropriate notification should be made to the state air quality or environmental agency.
- Step 3 - If, in the opinion of the furnace operator, the scrap is too contaminated to be melted without causing further smokey emissions to the ambient air, it will not be placed in the furnace.

E Calibration of the equipment: (62.1510 - Monitoring Requirements)

Nu-Cor will operate furnace at or above a temperature of 1650°F when melting aluminum containing material. That temperature is selected because it incorporates the maximum excursion variance of the probe (Omega technicians explain that the temperature tolerance for that probe is 1.5°C or 0.25% of the reading). As long as the probe is working the actual temperature will not be below 1600°F if the digital readout is held at 1650°F.

Before any scrap is placed in the furnace the digital readout will have reached 1650°F and the operator will log, in a physical log near the furnace, both the date and time when that temperature was reached. From that time forward, until no more aluminum scrap is placed in the furnace, a temperature at or above 1650°F will be maintained. Any excursion below that temperature will be recorded as a violation and must be reported to the Ohio EPA regional office.

The probe is installed at the stack exit and will monitor the temperature in one minute increments. Those measurements will be stored in the Logging and Monitoring program in the computer for re-calculation according to the averaging times in the regulation.

The owner will inspect the burners and the probe at least annually and record the date

and time of inspection in the furnace log. The inspection will include pilot, sensor and internal structures, seals, motors, combustion chamber, refractor lining, afterburner shell, dampers, fans and blowers. The results of the annual inspection will be certified as such. Any repairs required after the inspection will be undertaken before the furnace is used again and certification in the furnace log will be made to indicate when the repairs were completed.

F. **Reporting: (62.1515 - Notifications)**

If required, J & J Cores will report to the Ohio EPA, semiannually, any violations of the temperature or any other problems associated with the furnace.

G. **Records: (62.1516 - Reports)**

J & J Cores will retain computer records of the daily operation of the furnace for 5 (five) years. The records will be available to the Ohio EPA upon request. Records of the exceedances, if any, will also be kept by J & J Cores, as well as records of the inspections and actions taken to correct equipment problems noted during the inspections.

CONSENT AGREEMENT AND FINAL ORDER

J&J Cores

Docket No.

~~CWA-05-~~ 2005 0019

CERTIFICATE OF SERVICE


I hereby certify that I have caused the original of the foregoing Complaint and Consent Agreement and Final Order (CAFO) to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and a copy of the CAFO to be served upon the persons designated below, on the date below, by depositing a copy in the U.S. Mail, certified-return receipt requested, in an envelope addressed to:

Richard Lehman, President
J&J Cores
107 West Canal Street
Newcomerstown, OH 43832

and by first-class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

on the 18th day of April, 2005.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0330 0005 9025 6930